IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

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CIVIL WRIT No. 2403 of 1996

RAJ KUMAR
V/S
STATE & ORS

Mr VASUDEO, for the appellant / petitioner

Mr. RK SINGHAL, for the respondent

Date of Order : 5.11.2007

HON'BLE SHRI N P GUPTA,J.

ORDER

Heard learned counsel for the parties.

By this petition, the petitioner seeks to challenge the orders of the learned Board of Revenue, learned Revenue Appellate Authority, and the learned S.D.O., whereby the mutation recorded by the Tehsildar, being mutation number 866 dt. 21.12.83, has been set aside.

The facts of the case are, that the husband of the private respondent no.2, hereafter referred to as the respondent, and the petitioner were real brothers, the husband of the respondent executed a registered relinquishment deed in favour of the petitioner on 22.9.1983, relinquishing all his rights in the suit land, which admittedly devolved on the two brothers by inheritance. On the basis of this relinquishment deed, proceedings were initiated for mutation, and the mutation

was sanctioned on 8.11.83. The executant of the relinquishment deed expired, and thereafter in the year 1986, the respondent filed an appeal against the mutation before the learned S.D.O. The learned S.D.O. by order Annexure-3 allowed the appeal holding, that under the Rajasthan Tenancy Act transfer of khatedari rights is not contemplated by any document like relinquishment deed, and therefore, on the basis of relinquishment deed the mutation could not be sanctioned. The learned Revenue Appellate Authority also endorsed the findings, by concluding, that Khatedari Bhumi can only be alienated by gift, sale, mortgage, or subletting, and the transfer made by relinquishment is not valid, and upheld the order of the learned S.D.O. vide judgment Annexure-4, and the learned Revenue Board also dismissed the revision vide Annexure-5.

Assailing the impugned judgment Annexures 3, 4, and 5, it is contended by the learned counsel for the petitioner, that under the Rajasthan Tenancy Act, khatedari rights are transferable, and heritable, with certain restrictions, like prohibition of transfer by a person like SC/ST in favour of person not belonging to such caste, or tribe, or imposing restrictions about subletting, or mortgage, not to be for a period of time beyond the one specified, but then there is no prohibition on transfer of rights by way of relinquishment deed, thus the impugned orders are liable to be set aside.

Learned counsel for the respondent, on the other hand, supported the impugned orders, by reading the provisions of Section 42, and contending, that this section contemplated transfer only by way of sale, gift, or bequest, and by Section 43 transfer by way of mortgage is permitted, then by virtue of Section 44 right to sublet is permissible, and therefore, no other type of transfer is contemplated by the provisions of Rajasthan Tenancy Act, and therefore, the impugned orders are perfectly alright.

I have considered the submissions, and have gone through the impugned orders, so also the provisions of the Rajasthan Tenancy Act.

In my view, the impugned orders can possibly not be sustained, as they are contrary to the basic provisions, even of the Rajasthan Tenancy Act. In this regard I may refer to the provisions of Section 41 of the Rajasthan Tenancy Act, which reads as under:-

> "41 Transferability of Khatedar's interest- The interest of a Khatedar tenant shall be transferable, otherwise than by way of sub-lease, subject to the conditions specified in sections 42 and 43."

A bare reading of this section is enough to conclude, that the conclusions arrived at by the learned

authorities below are wholly untenable. Section 41, in unequivocal terms, enacts the interest of the Khatedar tenant to be transferred, and only prohibits subletting, and transferability is circumscribed by certain conditions, enacted in Section 42 and 43. Section 42 as noticed above, prohibits transfer by person belonging to SC/ST to a person not belonging to such caste or tribe, about the extent of the land, to prevent fragmentation, while Section 43 imposes restrictions in case of mortgages but then from these provisions, to read, as if the Tenancy Act only permits transfer by way of Sale, Bequest, Will, or mortgage etc. does, to say the least, amounts to doing violence with the language of Section 41, which in equivocal terms enacts the transferability of interest of Khatedar's right. The matter of transfer of interest of immovable property is a matter covered by other legislations, including Transfer of Property Act, or the Stamp Act, or the Registration Act, and transfer by way of relinquishment is one of the recognised modes of transfer. In that view of the matter, no exception could be taken to a transfer of interest of Khatedari Right, to be effected by relinquishment deed. Of course, subject to existent rules, or other requirements, whereunder property can be transferred by way of relinquishment, which are not shown to be existent in the present case.

The other aspect of the matter also is, that the appeal before the S.D.O. was barred by limitation, as the appeal challenging mutation of the year 1983, was filed in the year 1986. May be that the application under Section 5 of the Limitation Act was filed; but then, it is not shown, that that application was considered on merits, and was allowed. Simply by making mention of the fact of filing of such application, and then considering the case on merits, cannot be sustained, on the face of clear language of Section 3 of the Limitation Act.

Thus, considering from any stand point, I do not find the orders Annexures-3, 4 and 5 to be sustainable.

The result of the above is, that the writ petition is allowed. The impugned orders Annexures-3, Annexure-4, and Annexure-5 are quashed, and the order Annexure-2 is restored. The parties are left to bear their own costs.

(N.P.GUPTA),J.